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**State of Louisiana**  
Division of Administration  
**Office of State Uniform Payroll**

**REPLACED BY OSUP MEMO #2010-22**  
July 3, 2008

OFFICE OF STATE UNIFORM PAYROLL MEMORANDUM #2009-02

TO: All ISIS HR Paid Agencies

FROM: Jena W. Cary  
Director

SUBJECT: Nonqualified Deferred Compensation Annual Election for School Year 2008-2009

Section 409A of the Internal Revenue Code provides regulations governing the taxability and reporting requirements of Nonqualified Deferred Compensation. Nonqualified Deferred Compensation (NQDC) is earnings that an employee earns in one year, but that are paid in a later year. In order to be considered NQDC, the employee must be offered a choice of pay plans and elect to receive payment over an extended period. An example of this is a teacher who works over a 9-month school year but elects to receive compensation over an extended period of 10, 11, or 12 months. If the agency does not offer a choice of pay plans, then the pay plan is not considered NQDC, regardless of the payment period, and the employee election and agency plan/policy documents are not required.

**Agencies that offer the employee a choice of pay plans must meet the following election requirements before the beginning of the 2008-2009 work period or school year.**

- The employee must give a written (or electronic) election to the agency notifying the agency that the employee wants to spread out their compensation over an extended period (10, 11, or 12 months).
- The election must be made before the beginning of the 2008-2009 work period or school year. A new election is not required for subsequent years if an arrangement is made providing that a pre-existing election will remain in place until the employee elects a change.
- An employee's election is **irrevocable** with respect to that work period or school year. This information must be conveyed to the employee.
- The election must state how the compensation is going to be paid if the election is made (for example, over the 12 months starting with the beginning of the school year).
- No particular form is necessary for the election, and it does not have to be filed with the IRS.
- The agency and/or employee may be subject to tax penalties if all the requirements of §409A are not met.

Agencies should already have completed a written policy describing the various pay plans offered, how they will collect elections, set deadlines for the election and how they will handle employees who do not submit elections. Agencies should also have written documentation outlining how these employees are to be paid for compensation earned during the work period or school year.

Questions regarding this issue should be directed to a member of the OSUP Compliance and Research Unit at [\\_DOA-OSUP-COMP@LA.GOV](mailto:_DOA-OSUP-COMP@LA.GOV) or (225):

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